

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD**

**NEW YORK-PRESBYTERIAN BROOKLYN  
METHODIST HOSPITAL**

**and**

**Case 29-CA-247813**

**NEW YORK STATE NURSES ASSOCIATION**

**ORDER<sup>1</sup>**

The Respondent's Motion to Dismiss the Complaint is denied. The Respondent has not demonstrated that the complaint fails to state a claim upon which relief can be granted and that it is entitled to judgment as a matter of law.

Dated, Washington, D.C., April 20, 2020.

JOHN F. RING,

CHAIRMAN

WILLIAM J. EMANUEL,

MEMBER

---

<sup>1</sup> Member Kaplan is a member of the panel for quorum purposes only and did not participate in the adjudication of this matter.

In *New Process Steel v. NLRB*, 130 S.Ct. 2635 (2010), the Supreme Court left undisturbed the Board's practice of deciding cases with a two-member quorum when one of the panel members has recused himself. Under the Court's reading of the Act, "the group quorum provision [of Sec. 3(b)] still operates to allow any panel to issue a decision by only two members if one member is disqualified." *New Process Steel*, 130 S. Ct. at 2644. See also, e.g., *D.R. Horton*, 357 NLRB 2277, 2277 n.1 (2012), enfd. in relevant part, 737 F.3d 344, 353 (5th Cir. 2013); *1621 Route 22 West Operating Company*, 357 NLRB 1866, 1866 n.1 (2011), enfd. 725 Fed. Appx. 129, 136 n.7 (3d Cir. 2018).